

Wage and Hour Division, Labor

§ 502.5

Accordingly, the enforcement functions carried out by the WHD under the INA and these regulations apply to the employment of any H-2A worker and any other U.S. workers hired by H-2A employers in corresponding employment as the result of any application filed with the Department on and after June 1, 1987.

§ 502.2 Coordination of intake between DOL agencies.

Complaints received by ETA or any State Workforce Agency (SWA) regarding contractual H-2A labor standards between the employer and the employee will be immediately forwarded to the appropriate WHD office for appropriate action under these regulations.

§ 502.3 Discrimination prohibited.

(a) No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has:

(1) Filed a complaint under or related to sec. 218 of the INA or these regulations;

(2) Instituted or caused to be instituted any proceedings related to sec. 218 of the INA or these regulations;

(3) Testified or is about to testify in any proceeding under or related to sec. 218 of the INA or these regulations;

(4) Exercised or asserted on behalf of himself or others any right or protection afforded by sec. 218 of the INA or these regulations; or

(5) Consulted with an employee of a legal assistance program or an attorney on matters related to sec. 218 of the INA, or to this subpart or any other Department regulation promulgated pursuant to sec. 218 of the INA.

(b) Allegations of discrimination against any person under paragraph (a) of this section will be investigated by the WHD. Where the WHD has determined through investigation that such allegations have been substantiated, appropriate remedies may be sought. The WHD may assess civil money penalties, seek injunctive relief, and/or seek additional remedies necessary to make the employee whole as a result of the discrimination, as appropriate, and may recommend to ETA debarment of any such violator from future labor

certification. Complaints alleging discrimination against U.S. workers and immigrants based on citizenship or immigration status may also be forwarded by the WHD to the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices.

§ 502.4 Waiver of rights prohibited.

No person shall seek to have an H-2A worker, or other U.S. worker hired in corresponding employment by an H-2A employer, waive any rights conferred under sec. 218 of the INA, the regulations at 20 CFR part 655, Subpart B, or under these regulations. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the INA or these regulations shall be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the INA or these regulations. This does not prevent agreements to settle private litigation.

§ 502.5 Investigation authority of Secretary.

(a) *General.* The Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate and, in connection therewith, enter and inspect such places (including housing) and such vehicles, and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Secretary to determine compliance with contractual obligations under sec. 218 of the INA or these regulations.

(b) *Failure to cooperate with an investigation.* Where any employer (or employer's agent or attorney) using the services of an H-2A worker does not cooperate with an investigation concerning the employment of H-2A workers or U.S. workers hired in corresponding employment, the WHD shall report such occurrence to ETA and may recommend that ETA revoke the existing certification that is the basis for the employment of the H-2A workers giving rise to the investigation, and the WHD may recommend to ETA the